IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.632 OF 2006

Mr. Manohar Ganpat Salunke ....Applicant.

V/s

The State of Maharashtra ....Respondent.

Mr. S. Kamlakar i/b Amit Jabotkar for the applicant.
Ms. M.H. Mhatre, APP for the State.
Mr. M.S. Mohite for respondent Nos.2, 3 and 5.

CORAM: V.M. KANADE, J.

DATE: 20th April, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. This is an application for vacating the stay granted by this Court by order dated 21/2/2006 whereby the trial court was directed that the judgment should not be delivered for a period of three weeks and time for disposal of the case was extended for a period of 12 weeks.

3. Brief facts which are relevant are as under:-

4. The applicant is a father of the complainant who is presently residing in U.S.A. The complaint was

filed by her against against her husband - respondent No.4 and her in-laws for an offence punishable under section 498A of the Indian Penal Code.

5. The husband of the complainant is also residing at the moment in U.S.A. and, therefore, an application was made by her in-laws who are also accused i.e. respondent Nos. 2 and 3 in the present application for separating the trial. That application was allowed. Initially, the application was filed in this Court by respondent Nos. 2 to 5 for quashing the complaint. However, the said application was withdrawn and, in the said application, an order was passed by this Court on 11/7/2005 granting permission to the applicants to make an application for separating the trial and the trial was expedited. The trial court was directed to dispose of the trial by 28/2/2006.

6. It is the contention of the learned Counsel appearing on behalf of the respondent Nos. 2, 3 and 5 that after the evidence of all the witnesses was recorded, all attempts which were made to serve the complainant had failed. The statements of accused i.e. respondent Nos. 2 and 3 herein were recorded under section 313 of the Cr.P.C and the matter was

fixed for arguments and, thereafter, the present application was filed by father of the complainant in which the ex-parte order was obtained. The grievance of respondent Nos. 2 and 3 is that the trial is delayed purposely to harass the respondents herein and though the summons was served on the present application, the complainant chose not to remain present in the Court to give her evidence and, therefore, the learned Magistrate had no other option but to proceed with the trial. After the application for issuing fresh summons to the complainant was made by the father of the complainant and after the said application was rejected by the learned Magistrate by passing a reasoned order, the present application is filed.

7. I have perused the roznama as also number of summonses which were issued for the purpose or serving the complainant. Though the summons was served on the father of the complainant i.e. the applicant herein, he chose not to give her address in U.S.A. and, as a result, she could not be served through American Embassy. A solemn statement was made by the learned Counsel appearing on behalf of the complainant in earlier application viz. Criminal Application No. 3712 of 2005 in Criminal Application No. 5190 of 2003

that the complainant was going to return to India in December, 2005. After recording the said statement which was made by the learned Counsel appearing on behalf of the complainant, this Court (Coram: Smt. V.K. Tahilramani, J.) in order dated 11/7/2005 directed that the trial should be disposed of by 28/2/2006. In spite of that the complainant has chosen not to remain present before the Magistrate for the purpose of giving her evidence. The learned Counsel for the applicant has submitted that the applicant is working and is also studying in U.S.A. and, therefore, some further time should be given so that she can come and give her evidence before the Magistrate.

8. After having perused the record, in my view, it is clear that the complainant has not been diligent in pursuing the complaint which she had lodged with the police which has resulted in filing of the charge-sheet and prosecution of the respondents - accused. It appears that the complainant is not very serious in pursuing her case though the stay to the trial was vacated on 11/7/2005. The complainant, thereafter, has not appeared before the trial court for giving evidence. The contention of the learned Counsel for the applicant that the summons was not

served and, therefore, she could not appear, cannot be accepted since her father was served on number of occasions and was very well aware of the dates which were given by the Court.

9. Under these circumstances, trial court is directed to expeditiously dispose of the case.

10. However, as a last chance, the complainant is given further six weeks' time till 15/6/2006 before which she can come and give her evidence before the trial court. If the complainant appears before the trial court before 15/6/2006, the Magistrate may record her evidence and, thereafter, decide the case on merits in accordance with law. In any event, the Magistrate may dispose of the case by 30/6/2006. With these directions, Criminal Application No. 632 of 2006 is disposed of.

V.M. KANADE, J.